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CPLR 302(a): Amendment

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UCC. If it is, it will have a four-year period; if it is not, it will have the six-year period provided by the CPLR.

ARTICLE 3 — JURISDICTION AND SERVICE, APPEARANCE AND CHOICE OF COURT

CPLR 302(a): Amendment.

The revisers of the CPLR have amended section 302(a) to include a new subsection (3), which provides that the New York courts will have in personam jurisdiction over a non-domiciliary defendant who

> 3. commits a tortious act *without* the state causing injury to person or property within the state . . . if he
> (i) *regularly* does or solicits business, or engages in any other *persistent* course of conduct, or derives *substantial* revenue from goods used or consumed or services rendered, in the state, or
> (ii) expects or should reasonably expect the act to have consequences in the state and derives *substantial* revenue from interstate or international commerce. [Emphasis added.]

Prior to the enactment of CPLR 302, a liberal trend was noticeable among those United States Supreme Court decisions which concerned the constitutionality of "long-arm" statutes.[17] The requirement of physical presence within a state gave way to the notion that a non-domiciliary who committed certain acts within the state would be subject to in personam jurisdiction if the imposition of jurisdiction did not offend "our traditional conception of fair play and substantial justice. . . ."[18] In *International Shoe Co. v. Washington,*[19] this was interpreted to mean that due process required a defendant to have certain "minimum contacts" before a state could exercise in personam jurisdiction.

In 1965, the New York Court of Appeals had the opportunity, for the first time, to interpret its own "long-arm" statute. Before it, as a guide, was the liberal decision of the Supreme Court of Illinois in *Gray v. American Radiator & Standard Sanitary Corp.*[20] In that case, an Ohio manufacturer was said to come within the purview of the Illinois "tortious act" jurisdictional statute when a valve he had manufactured in Ohio caused injury in Illinois. The Illinois Supreme Court held that there could be no distinction between the negligent act of manufacturing and the consequences

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[17] See Hanson v. Denckla, 357 U.S. 235 (1958); McGee v. International Life Ins. Co., 355 U.S. 220 (1957); International Shoe Co. v. Washington, 326 U.S. 310 (1945).

[18] International Shoe Co. v. Washington, 326 U.S. 310, 320 (1945).

[19] *Supra* note 17.

[20] 22 Ill. 2d 432, 176 N.E.2d 761 (1961).

caused thereby. Since the New York statute was practically identical with the Illinois provisions interpreted in *Gray*, it would have been reasonable for the New York courts to follow the Illinois interpretation. Yet, in *Feathers v. McLucas*,[21] the Court of Appeals held that New York lacked jurisdiction where defendant's product, negligently manufactured outside New York, caused injury here. The Court distinguished a tortious act from the consequences of that act. Therefore, since CPLR 302(a)(2) covered only a tortious act committed in this state, there was no basis for the assertion of jurisdiction.

It appears that the intent of the revisers in adding new subdivision (3) to CPLR 302(a) was to overcome the *Feathers* case and to bring within the jurisdictional reach of New York those non-domiciliaries whose tortious acts outside the state cause injury in New York (provided that either of two conditions, subparagraphs (i) or (ii), are met).

The first condition, (i), appears to require a regular course of conduct in the state. The second condition, (ii), requires that the defendant reasonably expect his act to have forum consequences *and* that he derive substantial revenue from interstate or international commerce. There is, however, no requirement that the tortious act committed outside the state be connected with the acts specified in subparagraphs (i) and (ii),[22] except that the cause of action must arise out of the act foreseen under subparagraph (ii).[23]

It should be noted that, in its recommendations on this amendment, the Judicial Conference assumed that it would be constitutional to exercise jurisdiction over a non-domiciliary who could have foreseen that his act would have consequences within the state and who had other contacts with the state.[24] The question for the Conference was whether New York, as a matter of policy, should extend its jurisdiction to these constitutional limits. This problem is made clearer by a hypothetical: *X*, a New York domiciliary with New York license plates on his automobile, buys a tire from a small retailer in Nebraska and injury occurs in New York when the tire explodes. It is reasonable to assume that the

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[21] 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8 (1965). See also Singer v. Walker, 15 N.Y.2d 443, 209 N.E.2d 68, 261 N.Y.S.2d 8 (1965).

[22] In *International Shoe*, the cause of action arose out of the minimum contacts. While CPLR 302(a)(3)(i) requires minimum contacts—*regular* business, *persistent* course of conduct or *substantial* revenue—the cause of action need not arise therefrom.

[23] It would appear that under the facts of *Feathers*, the requirement that the defendant should have foreseen the forum consequences of his act would be satisfied.

[24] 1966 N.Y. LEG. DOC. No. 90, ELEVENTH ANNUAL REPORT OF THE JUDICIAL CONFERENCE 132, 135-36.

local retailer could foresee New York consequences due to a defect in the tire. The Conference concluded that New York would have *power* under the federal constitution to exercise personal jurisdiction over the retailer, but, as a matter of policy, it would be undesirable to do so.[25] Yet, if the retailer were a large corporation with extensive contacts in New York, or did extensive business in interstate commerce, the Conference believed that it would be fair (and constitutional) to exercise jurisdiction.

It would seem that in the case of the local Nebraska retailer, the court could not exercise jurisdiction because of a lack of "minimum contacts," *as that term has been earlier defined.* The additional factor that the retailer was doing business in interstate or international commerce (CPLR 302(a)(3)(ii)) would not seem to change the situation.

However, neither the CPLR Committee of the Judicial Conference, the Conference itself, nor the legislature was unaware of these problems of potential unconstitutionality. But the absence of clear United States Supreme Court guidelines made it necessary —in view of the general legislative intent to expand jurisdictional bases in the amended 302—to step forward with an approach which would realize the intent while at the same time would honor constitutional requirements whose limits have yet to be authoritatively defined. The dividing line is hazy, for which reason the amendment may in certain cases go beyond it, and thus fail of its purpose. But it will fail only in the individual case. CPLR 10004 will see to it that it does not fail in its entirety. The amendment is, in short, an invitation to the courts to press the long-arm tort sphere to whatever limits they think the United States Supreme Court will accept.

CPLR 302(a)(1): New York default judgment collaterally attacked in New Jersey.

In *J. W. Sparks & Co. v. Gallos,*[26] a New York stock brokerage firm brought an action in New Jersey to enforce a New York default judgment. The defendant collaterally attacked the jurisdiction of the New York court. Jurisdiction over the defendant in the original action had been acquired under Section 404, the long-arm provision of the New York City Civil Court Act.[27]

This case is one of the first recorded decisions of a foreign forum faced with a default judgment under New York's long-arm statute. The Supreme Court of New Jersey held that although

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[25] *Id.* at 136.

[26] 47 N.J. 295, 220 A.2d 673 (1966).

[27] This section is the New York City Civil Court Act's counterpart of CPLR 302.